

**UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
NEWPORT NEWS DIVISION**

| | | |
|---|---|-----------------------|
| In re: April Shree White |) | |
| |) | |
| Debtor |) | Case No. 14-50843-SCS |
| |) | |
| |) | |
| |) | Chapter <u>13</u> |
| |) | |
| 103 Springhouse Way, Apt. 101, Newport |) | |
| News, VA 23602 |) | |
| |) | |
| Last four digits of Social Security No: |) | |
| <u>3173</u> |) | |
| |) | |

NOTICE OF MOTION AND NOTICE OF HEARING

Debtor has filed papers with the Court to Continue the Automatic Stay.

Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one.)

If you do not want the Court to grant the relief sought in the motion (or objection), or if you want the Court to consider your views on the motion (or objection), **on or before (21) days, after service of this Motion**, you or your attorney must:

[X] File with the Court, at the address shown below, a written request for a hearing [or a written response pursuant to Local Bankruptcy Rule 9013-1(H)]. If you mail your request for hearing (or response) to the Court for filing, you must mail it early enough so the Court will **receive** it on or before the date stated above.

Clerk of Court
United States Bankruptcy Court
600 Granby Street, Room 400
Norfolk, VA 23510-1915

You must also mail a copy to:

Christian D. DeGuzman, Esquire
The America Law Group, Inc.
JANAF Office Building
5900 E. Virginia Beach Blvd., Suite 507
Norfolk, VA 23502

R. Clinton Stackhouse, Jr.
Chapter 13 Standing Trustee
7021 Harbour View Blvd., Suite 101
Suffolk, VA 23435

- [] Attend a hearing to be scheduled at a later date. You will receive separate notice of hearing. **If no timely response has been filed opposing the relief requested, the Court may grant the relief without holding a hearing.**
- [X] Attend the hearing on the motion (or objection) scheduled to be held on July 11, 2014 at 10:00 a.m. at United States Bankruptcy Court, Newport News Courtroom, U.S. Courthouse, 2400 West Avenue, Newport News, VA.

If you or your attorney do not take these steps, the Court may decide that you do not oppose the relief sought in the motion or objection and may enter an order granting that relief.

Date: June 13, 2014

/s/ Christian D. DeGuzman
Christian D. DeGuzman, Esq.
Counsel for the Debtor

CERTIFICATE OF SERVICE

I hereby certify that I on June 13, 2014, I have mailed or hand-delivered a true copy of the foregoing Notice of Motion to the parties listed on the attached service list.

/s/ Christian D. DeGuzman
Christian D. DeGuzman, Esquire

AES
PO Box 7051
Utica, NY 13504-7051

Lundy Sykes
PO Box 6005
Norfolk, VA 23508

Springhouse Apartments
c/o Sykes, Bourdon, Ahern&Levy
281 Independence Blvd.
Virginia Beach, VA 23462

Allianceone
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Suite 15
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United States Trustee
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Virginia Beach, VA 23456

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P.O. Box 1115
Richmond, VA 23218-1115

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
NEWPORT NEWS DIVISION**

In re: April Shree White
Debtor

Case No.: 14-50843-SCS
Chapter 13

**MOTION TO CONTINUE AUTOMATIC STAY AND
MEMORANDUM IN SUPPORT THEREOF**

COMES NOW the Debtor, by counsel, and offers the following Memorandum in Support of Debtor's Motion to Continue Automatic Stay:

JURISDICTION

1. Jurisdiction of this Court over the instant matter is based upon 28 U.S.C. §1334 and 157 in that this action arises in and relates to the bankruptcy case of the Debtor.
2. This proceeding is a core proceeding under 28 U.S.C. §157(b)(2)(A), (B), (K), and (O).
3. Venue is proper pursuant to 28 U.S.C. §1409.

BACKGROUND FACTS

4. On June 11, 2014 (hereinafter the "Petition Date"), the Debtor filed in this Honorable Court a petition for relief under Chapter 13 of the Bankruptcy Code, 11 U.S.C. § 1301 et seq. (the "instant case").
5. R. Clinton Stackhouse, Jr. was appointed to serve as Chapter 13 trustee in this case (the "Trustee").
6. Within the year prior to filing the instant case, Debtor has been a debtor in one (1) pending Chapter 13 bankruptcy case (the "previous case"), which was filed on December 16, 2011 and dismissed on December 19, 2013. (Case No. 11-52217-FJS).
7. The previous case was dismissed by the Court for failure to make plan payments to the Trustee and an inability to cure the default.

FACTS OF THE INSTANT CASE

8. In the instant case, Debtor has proposed a Chapter 13 Plan (the “Plan”) that commits to pay the Trustee all projected disposable income, \$380.00 per month for a period of sixty months. Other than administrative expenses, the Plan proposes the following:

- a. To pay secured claims of \$1,179.00;
- b. To pay priority claims under 11 U.S.C. §507 \$2,984.09;
- c. To pay a dividend to non-priority unsecured creditors of 13.00%, which claims are estimated to be approximately \$107,580.00, greater than half of which consists of non-dischargeable student loan debt.

DISCUSSION

9. Because the instant case was filed within one (1) year of the dismissal of the previous case, the automatic stay will expire in the instant case on July 11, 2014, unless the Court extends the automatic stay pursuant to 11 U.S.C. §362 (c)(3)(A) and (B).

10. Pursuant to the provisions of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (“BAPCPA”), the Debtor must demonstrate to the Court that the instant case was filed in good faith in order to obtain an extension of the automatic stay pursuant to 11 U.S.C. §362 (c)(3)(B).

11. If the Court finds grounds for presuming the instant case was filed “not in good faith” §362(c)(3)(C) would impose a burden on Debtor to overcome such a presumption and prove good faith by clear and convincing evidence. If, however, the Court finds no grounds for presuming the instant case was filed “not in good faith,” Debtor must merely prove good faith by a preponderance of the evidence. In re Havner, 336 B.R. 98, 103 (Bankr. M.D.N.C. 2006); In re Ball, 336 B. R. 268, 273 (Bankr. M.D.N.C. 2006)

12. Within the context of motions to continue the automatic stay pursuant to §362(c)(3), In re Chaney, 362 B.R. 690, 694 (Bankr. E.D. Va. 2007) instructs that the term “good faith” was defined judicially in the Fourth Circuit by Deans v. O’Donnell, 692 F.2d 968, 972 (4th Cir. 1982), further refined by Neufeld v. Freeman, 794 F.2d 149, 152 (4th Cir. 1986), and left unchanged by Congress when it created §362(c)(3). Chaney at 694.

13. Pursuant to Neufeld v. Freeman, good faith determinations require courts to consider, *inter alia*, “the percentage of proposed repayment, the Debtors’ financial situation, the period of time the payment will be made, the Debtors’ employment history and prospects, the nature and amount of unsecured claims, the Debtors’ past bankruptcy filings, the Debtors’ honesty in present facts, and any unusual or exceptional problems facing the particular Debtors.” Id. at 152, *citing* Deans v. O’Donnell, 692 F.2d 968, 972 (4th Cir. 1982). The focus of the inquiry is “to determine whether or not, considering ‘all militating factors,’ there has been ‘an abuse of the provisions, purpose, or spirit’ of Chapter 13 in the proposal or plan.” Neufeld, 794 F.2d at 152, *citing* Deans at 972 and *quoting* 9 Collier on Bankruptcy 9.20 at 319 (14th ed. 1978).

14. In order to apply the Fourth Circuit’s definition of good faith in determining whether the automatic stay should be extended pursuant to §362(c)(3),

“[T]he court must be satisfied that the plan in the new case will succeed where the plan in the prior case did not. Usually this will require a find that some change in the financial or personal affairs of the debtor has occurred that will allow the debtor to perform under the terms of the plan in the new case. But the inquiry does not end there. The court needs to determine that the repetitive filing does not violate the spirit of the Bankruptcy Code. The new case must not be a ploy to frustrate creditors. It must represent a sincere effort on the part of the debtor to advance the goals and purposes of chapter 13”

Chaney at 694.

ARGUMENT

15. In the case *sub judice*, there is a presumption that the instant case was filed “not in good faith” as to all creditors. Therefore, Debtor must prove by clear and convincing evidence that the instant case was filed in good faith.

16. In the instant case, the Debtor has acted in good faith, and Debtor requests that the Court grant an extension of the automatic stay as to all creditors, as to Debtor and Debtor’s property, and as to the property of the estate for the duration of the instant case. In support thereof, Debtor submits an Affidavit, which is attached hereto as Exhibit “A” and incorporated hereby by reference thereto.

17. Applying the Neufeld factors to the Debtor’s circumstances and to this case leads to the following conclusions:

- a. *Percentage of proposed repayment* – The Plan proposes to pay a dividend of 13.00% to non-priority unsecured creditors. Such creditors would receive a dividend of 0.00% if Debtor were to file a Chapter 7 bankruptcy case. Application of this factor favors a finding of good faith.
- b. *Debtor’s financial situation* – The Debtor’s financial situation is now sufficient to allow her to maintain an average standard of living for herself, and to complete the terms of the Chapter 13 Plan.
 - i. Debtor is no longer helping to pay for her grandmother’s medical and living expenses, which caused Debtor to become delinquent with her Chapter 13 plan payments in the previous case. An affidavit describing these expenses is attached hereto as “Exhibit A.”

Furthermore, Debtor has no extraordinary expenses and is not maintaining any expenses that are not necessary for her maintenance and support. Application of these factors favors a finding of good faith.

- c. *Period of time payment will be made* – The period of time in which payments will be made of sixty (60) months is reasonable and is based upon the Debtor’s best efforts. Application of these factors favors a finding of good faith.
- d. *Debtor’s employment history and prospects* – The Debtor’s household income sources demonstrates that the proposed Chapter 13 Plan is feasible and was filed in good faith. Application of these factors favors a finding of good faith.
- e. *Nature and amount of unsecured claims* – Likewise, the nature and amount of the Debtor’s unsecured debt demonstrates her good faith.
 - i. Debtor’s unsecured, non-priority debts are estimated to be approximately \$107,580.00, greater than half of which consists of non-dischargeable student loan debt, and is being proposed to be repaid under the current plan at a rate of 13.00%.
- f. *Debtor’s past bankruptcy filings* - The instant Motion is required due to the fact that the Debtor has filed more than one (1) bankruptcy case. However, the Debtor’s bankruptcy history does not indicate a lack of good faith. The Affidavit attached hereto as “Exhibit A” describes fully the reasons that the previous case was dismissed. Debtor incorporates such explanation herein by this reference. Debtor’s hardships do not indicate an abuse of the bankruptcy system; rather, they indicate an

honest but thus far unsuccessful attempt to financially reorganize.

Application of this factor favors a finding of good faith.

g. *Debtor's honesty in representing the facts* – The Debtor has fully disclosed all assets, liabilities, and pertinent information regarding her personal and financial affairs. Application of this factor favors a finding of good faith.

h. *Any unusual or exceptional problems facing the particular Debtor* –

There are no unusual or exceptional problems facing the Debtor.

Application of this factor favors a finding of good faith.

18. Debtor asserts that the instant case does not “violate the spirit of the Bankruptcy Code” and it is not “a ploy to frustrate creditors”; rather, it represents “a sincere effort on the part of the Debtor to advance the goals and purposes of Chapter 13”. See Chaney at 694. In support hereof, Debtor asserts the following additional arguments:

a. *The timing of the petition* - Between the dismissal of the previous case and the instant case, Debtor did not act in a manner so as to purposely delay payment of debts and did not delay in filing the instant case so as to intentionally frustrate creditors. Debtor's actions in this regard indicate an intent to use the bankruptcy system to resolve debts in an appropriate manner. Application of this factor favors a finding of good faith.

b. *How the Debt(s) arose* – The debts in this case arose primarily over a period of time extending back several years. The debts were not the result of misuse of credit or luxury spending; rather, they arose as a

result of ordinary living expenses that Debtor became unable to repay.

Application of this factor favors a finding of good faith.

c. *The Debtor's motive in filing the petition* – Debtor's motive in filing this case is to apply best efforts to repay creditors and receive a fresh start through bankruptcy. Application of this factor favors a finding of good faith.

d. *How the Debtor's actions affected creditors* – The Plan provisions and treatment of creditors are generally described in paragraph 8, *supra*. This factor will rarely favor a debtor as to the finding of good faith, because “filing for bankruptcy relief will almost always prejudice one's creditors.” Galanis, 334 B.R. at 696.

e. *Changes in circumstance and ability to complete this case* – The Affidavit attached hereto as “Exhibit A” describes fully the Debtor's changes in circumstances and explains both the legitimate bases for the filing of this case as well as the Debtor's ability to complete this case. Debtor incorporates such explanations herein by this reference. Application of this factor favors a finding of good faith.

WHEREFORE, the Debtor respectfully requests this Honorable Court to enter an Order extending the automatic stay as to all creditors, as to Debtor and Debtor's property, and as to the property of the estate for the duration of the instant case, and for such other and further relief as to the Court shall be deemed appropriate.

Respectfully submitted,
April Shree White

By: /s/Christian D. DeGuzman
Christian D. DeGuzman, Esquire
America Law Group, Inc.
5900 E. Virginia Beach Blvd., #507
Norfolk, VA 23502
Phone: (757) 333-7336
Fax: (757) 333-7873

CERTIFICATE OF SERVICE

I certify that on June 13, 2014, a copy of this Motion and Memorandum in Support Thereof was mailed via first-class mail, postage full pre-paid, to the Chapter 13 Trustee, R. Clinton Stackhouse, Jr., 7021 Harbour View Blvd., Suite 101, Suffolk, VA 23435, the United States Trustee, 200 Granby Street, Suite 625, Norfolk, VA 23510 and all creditors as set forth on the attached mailing matrix.

/s/Christian D. DeGuzman
Christian D. DeGuzman, Esquire
Counsel for Debtor

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Utica, NY 13504-7051

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Internal Revenue Service
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Office of Customer Service
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Richmond, VA 23218-1115

EXHIBIT A

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
NEWPORT NEWS DIVISION**

In re: April Shree White
Debtor

Case No.: 14-50843-SCS
Chapter 13

AFFIDAVIT OF APRIL SHREE WHITE

BEFORE ME, the undersigned authority, personally appeared April Shree White, known to me, and upon her oath stated as follows:

1. My name is April Shree White. I am above the age of 18 years and competent to make this affidavit. I have personal knowledge of the facts set forth in this affidavit.
2. I am the Debtor in the present bankruptcy case.
3. I reside at 103 Springhouse Way, Apartment 101, Newport News, VA 23602.
4. I am currently earning \$3,609.07 net monthly income from wages I do not expect my household income or expenses to change during the term of my Chapter 13 plan.
5. Prior to this case, I was involved in one (1) previous case within the eight (8) year period prior to the filing of my current Chapter 13 case, a Chapter 13 bankruptcy filed in this Honorable Court on December 16, 2011, and dismissed on December 19, 2013 (Case No. 11-52217-FJS) (the "previous case").
6. The previous case was dismissed because of failure to make plan payments to the Trustee, and an inability to cure the default.
7. During my previous case, I became delinquent with my Chapter 13 plan payments as a result of my grandmother's cancer diagnosis in March 2013. From that time onward, I was forced to assist her financially with respect to many of her monthly household expenses and medications. Her health quickly deteriorated and she finally passed away in December 2013, the same month my previous case was dismissed.
8. I am no longer obligated to assist my grandmother financially and I believe that the stability in my income will enable me to successfully complete this bankruptcy case.
9. I have listed all of my assets and all of my debts and have fully and accurately disclosed all of my income and expenses in the Schedules in this case.

10. I owe the following debts:

- i) To Capital One Auto Finance for an approximate amount of \$1,000.00, which represents the principal balance for a vehicle loan, secured by my 2006 Nissan Sentra.
- ii) To Grand Furniture for \$179.00, which represents the approximate balance for a furniture loan, secured by a bedroom set and television.
- iii) To the Internal Revenue Service and Virginia Department of Taxation for taxes of an approximate aggregate amount of \$3,341.47.
- iv) To unsecured nonpriority creditors, including student loans, an approximate amount of \$107,580.00, to which my plan proposes to pay a minimum dividend of thirteen percent (13%).

11. I am proposing to pay \$380.00 per month for a period of sixty (60) months, which is all of my disposable income, to the Trustee for disbursement to my creditors.

12. I desire to use the bankruptcy system to obtain a fresh start and have not been attempting to evade my responsibilities or delay my creditors' attempts to collect. The purpose of my bankruptcy filing is to retain my primary residence, re-pay my creditors the amount I can afford, and to obtain a discharge of my indebtedness.

15. My income is consistent and is likely to remain so during our case. My expenses are not likely to change substantially. My income leads me to believe I will be able to make my payments to the Trustee.

Further Affiant sayeth not.

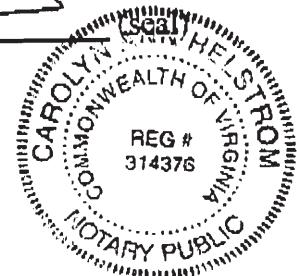
WITNESS the following signature and seal this 13 day of June, 2014.


April Shree White

CERTIFICATE OF ACKNOWLEDGMENT:

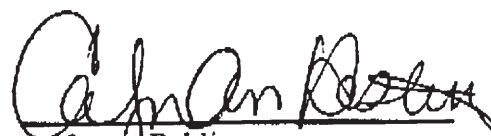
Commonwealth of Virginia

City/County of Newport News to wit:



The foregoing instrument was acknowledged before me this 13 day of June, 2014, by April Shree White.

My Commission Expires: 01-31-2017


Notary Public

CERTIFICATE OF SERVICE

I certify that on this 13th day of June, 2014 a copy of the above Affidavit executed on June 13, 2014 has been mailed via first class mail or via electronic means to R. Clinton Stackhouse, Jr., Trustee, the United States Trustee, counsel listed as follows, and all creditors set forth on the attached mailing matrix.

/s/Christian D. DeGuzman
Christian D. DeGuzman, Esq.

AES
PO Box 7051
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**UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
NEWPORT NEWS DIVISION**

| | | |
|-------------------|---|-----------------------|
| IN RE: |) | |
| |) | CASE NO. 14-50843-SCS |
| April Shree White |) | |
| |) | CHAPTER 13 |
| Debtor. |) | |

**ORDER GRANTING MOTION TO CONTINUE
AUTOMATIC STAY**

This matter came upon the Motion for Continuation of the Automatic Stay and the Memorandum in Support Thereof (the "Motion") and was filed herein by April Shree White (the "Debtor"); and

UPON CONSIDERATION WHEREOF, it appearing to the Court that the Debtor filed this bankruptcy case on June 11, 2014 (the "instant case"), and an Order for Relief was entered; and

It appearing that the Debtor has had one (1) prior Chapter 13 Bankruptcy case (the "prior case") pending within one (1) year prior to the filing of this case, which prior case was dismissed; and

It appearing that the Motion and a Notice of Hearing has been properly served upon all creditors and parties in interest; and

It appearing that the filing of the instant case was in good faith as to all creditors; it is, accordingly,

ADJUDGED, ORDERED, and DECREED that the automatic stay of 11 U.S.C. § 362(a) shall not terminate and is hereby extended without condition as to Debtor, Debtor's property, all creditors, and property of the bankruptcy estate throughout the pendency of this case; and it is further

ORDERED that the Clerk shall mail copies of this Order, once entered to all parties on the attached service list.

Date: _____

United States Bankruptcy Judge

Entered on Docket: _____

I ask for this:

By: /s/
Christian D. DeGuzman, Esquire VSB#79336
America Law Group, Inc.
5900 E. Virginia Beach Blvd., Suite 507
Norfolk, VA 23502
Phone: (757) 333-7336
Fax: (757) 333-7873
Counsel for Debtor

Seen and approved:

/s/
R. Clinton Stackhouse, Jr.
Chapter 13 Standing Trustee
7021 Harbour View Blvd., Suite 101
Suffolk, VA 23435

CERTIFICATION

Pursuant to Local Rule 9022-1(C), I hereby certify that all necessary parties have endorsed the above order.

/s/
Christian D. DeGuzman, Esquire
Counsel for Debtor

**LIST OF PARTIES TO
RECEIVE NOTICE OF ENTRY OF ORDER**

COMES NOW the Debtor, by counsel, and pursuant to Local Rule 9022-1(B)(1) advises the Court that the following is a list of parties to whom notice of the entry of order should be given, to-wit:

Christian D. DeGuzman, Esquire
America Law Group, Inc.
5900 E. Virginia Beach Blvd., Suite 507
Norfolk, VA 23502

R. Clinton Stackhouse, Jr.
Chapter 13 Standing Trustee
7021 Harbour View Blvd., Suite 101
Suffolk, VA 23435

April Shree White
103 Springhouse Way
Apartment 101
Newport News, VA 23602